

# MEMO

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**DATE:** August 5, 2004

**TO:** The Regional Council  
The Transportation and Communications Committee (TCC)

**FROM:** Donald Rhodes, Manager of Government and Public Affairs  
Phone: (213) 236-1840 E-Mail: rhodes@scag.ca.gov

**SUBJECT:** Reauthorization of TEA-21 and Federal Appropriations Update

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## SUMMARY:

Another two-month extension of TEA-21 is expected prior to the congressional recess on July 23<sup>rd</sup>. The FY05 Appropriations bill for transportation is expected to be folded into an Omnibus Appropriations Act, as has been done in recent years past. SCAG continues to advocate for a higher rate of return to the states in the reauthorization measure, among other issues, and for the Regional Consensus projects in the appropriations bill.

## BACKGROUND:

Following the direction of the Regional Council as expressed in the 2004 Legislative Program and the Southern California Consensus Program for TEA-21, staff has worked to ensure that SCAG related issues are being addressed in the reauthorization of TEA-21 and the federal FY05 Transportation Appropriations bill. This memorandum provides an update to members on both federal measures and SCAG's advocacy efforts on behalf of the region.

### Reauthorization of TEA-21

The Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21) expired September 30, 2003 and has since been extended several times. Its current expiration date is slated for July 30<sup>th</sup>, a week after the Congress recesses on July 23<sup>rd</sup>. Most observers believe that the Congress will pass another 60-day, "clean" extension to continue the program until September 30<sup>th</sup>, the end of the federal fiscal year. An extension would keep open the possibility for a last-minute enactment of the reauthorization bill in September before the congressional and presidential elections. Absent any action in September, Congress may pass yet another short-term extension or may pass a longer-term extension, deferring action until the new Congress takes over next year.

After months of being billions of dollars apart in their respective funding levels with the Senate-passed bill at \$318 billion and the House measure at \$284 billion, it appeared in recent weeks that negotiators were near agreement. While no official offers were made, the House leadership was reported to support a package of \$299 billion in contract authority (including \$10 billion in rescissions from prior unobligated balances) and \$284 billion in guaranteed obligations. At least part of the Senate conferees were said to be prepared to back \$304 billion in contract authority



and \$290 billion in guaranteed obligations. Further conference committee meetings were postponed, however, and no agreement was reached.

Several issues of concern to SCAG remain unresolved as the result of the congressional delay. Among them is the subject of the overall rate of return to the states, referred to as a state's "takedown," and the adoption of the revised ethanol fuel tax. Under TEA-21, states received a takedown of 93%; however, based on the Senate's proposed reauthorization takedown could drop to 83%. In reference to ethanol fuel tax, there was no mention of the tax in TEA-21. However, the Senate and Administration's versions of the bill look to redirect 2.5 cents of ethanol tax that had been diverted to the General Fund, and staff has worked to ensure the adoption of this change beyond the reauthorization using other legislation. As of this writing, no definitive results have been produced.

On a positive note, the Senate has proposed an increase of .5% for metropolitan planning take-down, the amount MPOs receive of a state's apportionment to conduct their mandated metropolitan planning activities. Under TEA-21, MPOs received 1%. The additional funding is critical in light of the creation of 42 new MPOs since the 2000 Census and the expansion of MPO responsibilities.

SCAG continues to press for a resolution in conference committee of the take-down issue and others via its Washington, D.C. representatives and as part of larger coalitions like the Southern California Consensus Program delegation, the Association of Metropolitan Planning Organizations (AMPO), the National Association of Regional Councils (NARC) and Caltrans.

### Federal FY05 Appropriations

Every year, Congress appropriates funds through a number of measures referred to as Appropriations bills. As of this writing on July 22<sup>nd</sup>, the House Subcommittee on Transportation, Treasury and Related Agencies Appropriations has "marked up" or revised its FY05 Appropriations bill. In total, the bill provides more than \$89.9 billion in transportation funding, an increase of \$1 billion over the President's request but \$495 million below the FY04 level. Discretionary spending has been set at \$25.4 billion, \$275 million below the President's request and \$2.9 billion below the FY04 level.

Transit program spending totals \$7.249 billion in the FY05 bill, including \$1 billion for new fixed guideway systems, which is down \$300 million from last year's allocated levels. The highway spending level, currently marked up at \$34.6 billion, is \$800 million more than last year's approved levels and an increase of \$1 billion above the President's FY05 budget request. **The subcommittee elected to only earmark those New Starts rail projects that have Full Funding Grant Agreements (FFGA) or that are expected to sign an FFGA within the next six months.**

Of the projects listed on the Regional Consensus Appropriations Request list, the only project that received an earmark was the Los Angeles County Metropolitan Transportation Authority Eastside Light Rail Transit Project for \$60 million. This is because **no highway projects were earmarked**. It was understood that highway earmarks were to be dealt with at a later time, but

as the July 23<sup>rd</sup> recess date nears, it appears more likely that Congress will roll the transportation appropriations bill into an Omnibus Appropriations Act, as it has the last two years.

As Congress enters the upcoming congressional election season and as the presidential election approaches, there is reason to believe an Omnibus bill will be passed prior to the September adjournment. If not, an Omnibus measure could not be enacted until the return of the Congress in the new year. SCAG is pressing the advancement of the Regional Consensus Appropriations requests and will continue to monitor the progress of the FY05 Appropriations bills closely.

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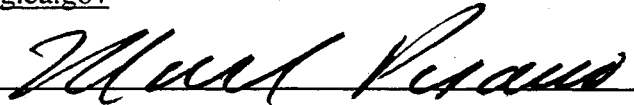
# MEMO

**DATE:** August 5, 2004

**TO:** The Regional Council  
The Transportation and Communications Committee

**FROM:** Donald Rhodes, Manager of Government and Public Affairs  
Phone: (213) 236-1840 E-Mail: [rhodes@scag.ca.gov](mailto:rhodes@scag.ca.gov)

**SUBJECT:** Innovative Financing and Project Delivery



## SUMMARY:

At both state and federal levels, SCAG is pursuing legislation to facilitate the use of private financing and expedited project delivery for regional transportation projects, which is germane to SCAG's need for innovative financing as proposed in the Regional Transportation Plan (RTP). Experts in federal tax financing have drafted language for SCAG on TIFIA and tax credit financing; SCAG's Washington representatives are advocating for inclusion of the language in the reauthorization of TEA-21 or S. 1637 (Grassley). SCAG's Sacramento representatives are advocating for the inclusion of SCAG's proposal, the Regional Investment in Goods Movement, Highways, and Transit Act (RIGHT), in a conference report expected when SB 1210 (Torlakson), SB 1793 (McPherson) and AB 3048 (Oropeza) are finalized in a joint conference.

## BACKGROUND:

SCAG's adopted 2004 RTP calls for the investment of \$62 billion in private financing for regional transportation projects including truck and rail capacity enhancements and Maglev. Working with CALCOG and the California Foundation on the Environment and the Economy (CFEE), a roundtable of transportation leaders, SCAG has advocated proposals to create in legislation the private financing tools necessary to implement the RTP. This memorandum updates members on SCAG's efforts at the state and federal level and briefly explains the legislative changes SCAG seeks.

### TIFIA, Tax Credit Equity & Tax Credit Bond

The Transportation Infrastructure Finance Initiative Act (TIFIA) allows the US Department of Transportation to provide direct credit assistance in the form of loans, loan guarantees, or lines of credit to sponsors of major transportation projects. Direct loans reimburse a project sponsor's expenditures for eligible project costs. Loan guarantees and lines of credit provide sources of capital should project revenues fall short of amounts needed to repay commercial project investors. TIFIA credit instruments offer project sponsors an excellent way to boost debt service coverage and enhance senior project obligations at an affordable cost.

Highway, transit, passenger rail, and certain inter-modal projects are eligible to receive TIFIA assistance and both public and private entities may apply for TIFIA assistance. Such entities include state DOTs, local governments, transit agencies, special authorities or districts, railroad



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companies, and private firms or consortia. The candidate project's eligible costs must reach at least \$100 million and must comply with the relevant federal regulations that attach to grant-funded transportation projects of the same type.

The changes SCAG seeks to TIFIA would make developmental grants available to project sponsors to fund the costs of predeployment activities, including environmental studies. SCAG also supports amendments to TIFIA currently included in the Senate version of the reauthorization bill that broadens the definition of eligible projects to include freight projects and that removes the annual limitation on the principal amount of credit support.

In the area of tax credit financing, language has been proposed that would facilitate raising investment capital for goods movement projects through tax credit equity and tax credit bonds. Tax credit equity works in the following manner: Investors contribute two-thirds of project costs with up front capital and receive annual tax credits and the principle at maturity in return. Tax credit bonds, by comparison, would be sold to institutional investors to raise 100% of project costs. A project sponsor would be required to pay the initial one-third non-federal match into a sinking fund.

With the necessary draft language prepared, SCAG's Washington representatives have been working to press these amendments into the TEA-21 reauthorization or the S. 1637 conference committees. However, with congressional progress slowed nearly to a halt in the face of ongoing disagreement about the appropriate funding levels for the reauthorization, progress has been gradual, but consistent and will continue.

#### Design Build, Design Sequencing and RIGHT

In Sacramento, three bills have advanced, SB 1210 (Torlakson), SB 1793 (McPherson) and AB 3048 (Oropeza), that relate to design build and design sequencing project delivery and public/private partnerships for goods movement project financing.

To capitalize on the expected conferencing-together of SB 1210, SB 1793, and AB 3048, SCAG has proposed a mechanism to speed investment in regional transportation projects. The Regional Investment in Goods Movement, Highways, and Transit Act (RIGHT) would create regional authorities to oversee the planning, design, construction, operation, maintenance, and financing of private sector-financed, user-supported projects.

According to RIGHT, an eligible project's total costs, excluding operations and maintenance, must equal or exceed \$100 million and the public funding contribution may not exceed 30% of project costs. Projects must be included in the Regional Transportation Plan and the Regional Transportation Improvement Program and must comply with environmental justice requirements. In entering into agreements with private developers of transportation projects, regional authorities could not preclude the construction or financing of competing public facilities, but could agree to make payments to make up any loss of revenues resulting from the competing facilities.

RIGHT includes environmental streamlining provisions to expedite project delivery. The role of county transportation commissions has also been strengthened in response to their concerns.

SCAG's Sacramento representatives are working with members of the Legislature in the "design-build conference committee" to include RIGHT in their report. To meet the needs of the region, additional dollars beyond current revenue streams must be maximized to increase goods movement and transportation infrastructure for the benefit of Southern California's economy.

CAP#101413

# MEMO

**DATE:** August 5, 2004

**TO:** The Regional Council  
The Transportation and Communications Committee

**FROM:** Donald Rhodes, Manager of Government and Public Affairs  
Phone: (213) 236-1840 E-Mail: [rhodes@scag.ca.gov](mailto:rhodes@scag.ca.gov)

**RE:** Update on Tribal Gaming Compacts and Prop 68 & 70

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## SUMMARY:

Two ballot initiatives on tribal gaming, Propositions 68 and 70, are drafted in a way that, if passed by voters, will void Governor Schwarzenegger's signed compact with the Indian tribes. Transportation stakeholders are concerned about the possibility the signed compact will be negated because its proceeds are to be used to repay amounts borrowed in recent years from dedicated transportation funds to bolster the General Fund. Propositions 68 and 70 do not backfill transportation funds and may merit further consideration by the Regional Council this summer.

## BACKGROUND:

In June, Governor Schwarzenegger signed a compact with five Indian tribes authorizing them to operate unlimited numbers of slot machines in exchange for a one-time payment of \$1 billion to the State, followed annually with as much as \$150 million a year in additional payments. The compact was ratified by the Legislature in AB 687 (Nunez). The compact is a serious concern for transportation stakeholders because the proceeds will be used to repay monies borrowed in recent years from dedicated transportation funding sources like the Traffic Congestion Relief Fund (TCRF), created by Proposition 42 in 2000.

If passed, Propositions 68 and 70 will negate the compact Governor Schwarzenegger recently negotiated. Proposition 68 allows eleven non-tribal racetracks and other gambling establishments who sponsored the initiative to operate 30,000 slot machines and pay 33%, upward of \$1 billion, of the revenue to the state. Prop 70, sponsored by the Agua Caliente Band of Cahuilla Indians, calls for the Governor to offer renewable 99-year gaming agreements to Indian tribes with no limits on the number of slot machines. Tribes would pay the state a portion of revenues based on the state's prevailing corporate tax rate, currently 8.84%. Revenues from neither Proposition 68 nor Proposition 70 would be used for transportation purposes, unlike the deal ratified in AB 687.

Reports indicate that sponsors and interested parties, including the Governor, are gearing up to fight for or against the propositions in the fall. The Regional Council may wish to review the propositions this summer in light of its stated policy of support for replenishing and firewalling Proposition 42 funds. Government Affairs will provide updates on the propositions as events arise.

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**Assembly Bill No. 687**

**CHAPTER 91**

An act to add Title 12 (commencing with Section 1811) to Part 3 of the Code of Civil Procedure, and to add Section 12012.40 to, and to add Article 6.5 (commencing with Section 63048.6) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, relating to tribal-state gaming compacts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 2004. Filed with  
Secretary of State July 1, 2004.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 687, Nunez. Tribal-state gaming compacts: ratification and payment securitization.

(1) Existing federal law, the Indian Gaming Regulatory Act of 1988, provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain gaming activities on Indian lands within a state. Existing California law expressly ratifies specified tribal-state gaming compacts.

This bill would ratify amendments of tribal-state gaming compacts entered into by the State of California and the Pala Band of Mission Indians, the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, the Rumsey Band of Wintun Indians, the United Auburn Indian Community, and the Viejas Band of Kumeyaay Indians.

The bill would also provide that specified acts and agreements related to the amended compacts are not projects for the purposes of California Environmental Quality Act.

(2) Existing law sets forth the duties of the Infrastructure and Economic Development Bank and its board of directors generally in performing various financing transactions, including the issuance of bonds or the authorizing of the issuance of bonds by a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity, known as a special purpose trust.

This bill would, upon a filing by the Director of Finance with the bank of the list of specified amended tribal compacts, called designated tribal compacts, authorize the bank to sell for, and on behalf of, the state all or any portion of the state's compact assets to a special purpose trust, which would be established as a not-for-profit corporation by the bill, except that the sale or sales would be limited to an amount necessary to provide the state with net proceeds of the sale not to exceed \$1.5 billion,

exclusive of capitalized interest on the bonds and any costs incurred by the bank or the special purpose trust in implementing the bill. "Compact assets" would be defined for these purposes as moneys required to be paid to the state under specified provisions of the designated tribal compacts, and the state's rights to receive those payments.

This bill would provide that the members of the board of directors of the bank, the Director of the Department of Transportation, and the Director of General Services shall serve ex officio as the directors of the special purpose trust, and would authorize the special purpose trust to issue bonds on the terms it determines. It would also authorize the special purpose trust to enter into agreements with any public or private entity and to pledge the compact assets that it purchases as collateral and security for the bonds. It would specify that the bonds issued pursuant to these provisions shall not be deemed to constitute a debt of the state or a pledge of the faith or credit of the state, and set forth the rights of the affected Indian tribes and holders of bonds under these provisions.

(3) Existing law establishes the Traffic Congestion Relief Fund and the Transportation Deferred Investment Fund in the State Treasury, and continuously appropriates the moneys in those funds for specified transportation purposes.

This bill would require the net proceeds of the sale of the compact assets to be deposited in these funds in specified amounts for specified purposes and priorities, thereby making an appropriation. The bill would require that amounts deposited in the Traffic Congestion Relief Fund and the Transportation Deferred Investment Fund be applied as a credit to transfers from the General Fund that the Controller would otherwise be required to make to that fund. The bill would also require that when these amounts have been paid to these funds pursuant to the provisions of the bill, or by other appropriations or transfers, the revenues received thereafter are to be remitted to the California Gambling Control Commission for deposit in the General Fund.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature hereby finds and declares both of the following:

(a) The Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the state pursuant to the federal Indian Gaming Regulatory Act of 1988 (18



U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701, et seq.) for the purpose of authorizing class III gaming, as defined in that act, on Indian lands within this state. The Governor has entered into amendments to certain tribal-state gaming compacts and has submitted a copy of those executed amendments to tribal-state compacts to both houses of the Legislature for ratification, and has submitted a copy of the executed amendments to the Secretary of State for purposes of subdivision (f) of Section 12012.25 of the Government Code.

(b) The amended tribal-state compacts, among other things, require payments to the state in anticipation of the issuance of bonds to be secured by those payments. It is in the public interest and a matter of urgency to authorize, and to implement as soon as possible, the sale of the right to receive those payments and a portion of certain other payments under the compacts, and the issuance of the bonds by the purchaser of the assets, in order to ensure that funds will be available for the purpose of funding essential transportation improvements and projects in the state.

SEC. 2. Title 12 (commencing with Section 1811) is added to Part 3 of the Code of Civil Procedure, to read:

#### TITLE 12. TRIBAL INJUNCTIONS

1811. (a) Following the issuance of the bonds as specified in Section 63048.65 of the Government Code and during the term of the bonds, if it reasonably appears that the exclusive right of an Indian tribe with a designated tribal compact, as defined in subdivision (b) of Section 63048.6 of the Government Code, pursuant to Section 3.2(a) of that compact has been violated, the tribe may seek a preliminary and permanent injunction against that gaming or the authorization of that gaming as a substantial impairment of the rights specified in Section 3.2(a), in order to afford the tribe stability in its gaming operation and to maintain the bargained-for source of payment and security of the bonds. However, no remedy other than an injunction shall be available against the state or any of its political subdivisions for a violation of Section 3.2(a). The Legislature hereby finds and declares that any such violation of the exclusive right to gaming under Section 3.2(a) is a substantial impairment of the rights specified in that section and will cause irreparable harm that cannot be adequately remedied by damages. No undertaking shall be required on the part of the tribes in connection with any action to seek the preliminary or permanent injunction.

(b) Notwithstanding any other provision of law, the parties to an action brought pursuant to subdivision (a) may petition the Supreme Court for a writ of mandate from any order granting or denying a

preliminary injunction. Any such petition shall be filed within 15 days following the notice of entry of the superior court order, and no extension of that period shall be allowed. In any case in which a petition has been filed within the time allowed therefor, the Supreme Court shall make any orders, as it may deem proper in the circumstances.

SEC. 3. Section 12012.40 is added to the Government Code, to read:

12012.40. (a) The following amendments to tribal-state gaming compacts entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) are hereby ratified:

(1) The amendment of the compact between the State of California and the Pala Band of Mission Indians, executed on June 21, 2004.

(2) The amendment of the compact between the State of California and the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, executed on June 21, 2004.

(3) The amendment of the compact between the State of California and the Rumsey Band of Wintun Indians, executed on June 21, 2004.

(4) The amendment of the compact between the State of California and the United Auburn Indian Community, executed on June 21, 2004.

(5) The amendment of the compact between the State of California and the Viejas Band of Kumeyaay Indians, executed on June 21, 2004.

(b) (1) In deference to tribal sovereignty, none of the following shall be deemed a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code):

(A) The execution of an amendment of tribal-state gaming compact ratified by this section.

(B) The execution of an intergovernmental agreement between a tribe and a county or city government negotiated pursuant to the express authority of, or as expressly referenced in, an amended tribal-state gaming compact ratified by this section.

(C) The on-reservation impacts of compliance with the terms of an amended tribal-state gaming compact ratified by this section.

(D) The sale of compact assets as defined in subdivision (a) of Section 63048.6 or the creation of the special purpose trust established pursuant to Section 63048.65.

(2) Except as expressly provided herein, nothing in this subdivision shall be construed to exempt a city, county, or a city and county from the requirements of the California Environmental Quality Act.

SEC. 4. Article 6.5 (commencing with Section 63048.6) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:



Article 6.5. Tribal Compact Assets Securitization

63048.6. The definitions contained in this section are in addition to the definitions contained in Section 63010 and together with the definitions contained in that section shall govern the construction of this article, unless the context requires otherwise:

(a) “Compact assets” means moneys required to be paid to the state under Sections 4.3.1 and 4.3.3 of the designated tribal compacts and the state’s rights to receive those payments.

(b) “Designated tribal compacts” means the amended and new tribal-state compacts, which are ratified by the Legislature, and that, among other things, require certain payments to the state in exchange for the exclusive right of the compact tribes to engage in certain gaming activities in their respective core geographic markets, all as specified in the amended and new compacts, and that are designated by the Director of Finance pursuant to subdivision (a) of Section 63048.65.

(c) “Operating expenses” means the reasonable operating expenses of the special purpose trust and the bank, including, but not limited to, the costs of preparation of accounting and other reports, maintenance of the ratings on the bonds, insurance premiums, or other required activities of the special purpose trust, and fees and expenses incurred for professional consultants, advisors, fiduciaries, and legal counsel, including the fees and expenses of the Attorney General incurred in connection with the enforcement of the pledges and agreements of the state pursuant to Section 63048.8.

63048.65. (a) Upon a filing by the Director of Finance with the bank of a list of designated tribal compacts and the specific portions of the compact assets to be sold, the bank may sell for, and on behalf of, the state, solely as its agent, those specific portions of the compact assets to a special purpose trust. To that end, a special purpose trust is hereby established as a not-for-profit corporation solely for that purpose and for the purposes necessarily incidental thereto. The bank may enter into one or more sales agreements with the special purpose trust on terms it deems appropriate, which may include covenants of, and binding on, the state necessary to establish and maintain the security of the bonds and exemption of interest on the bonds from federal income taxation. The portion of the compact assets to be sold shall be an amount or amounts determined by the Director of Finance that are necessary to provide the state with net proceeds of the sale, not to exceed one billion five hundred million dollars (\$1,500,000,000), exclusive of capitalized interest on the bonds and any costs incurred by the bank or the special purpose trust in implementing this article, including, but not limited to, the cost of financing one or more reserve funds, any credit enhancements, costs

incurred in the issuance of bonds, and operating expenses. Those specific portions of the compact assets may be sold at one time or from time to time.

(b) The special purpose trust may issue bonds, including, but not limited to, refunding bonds, on the terms it shall determine, and do all things contemplated by, and authorized by, this division with respect to the bank, and enjoy all rights, privileges, and immunities the bank enjoys pursuant to this division, or as authorized by Section 5140 of the Corporations Code with respect to public benefit nonprofit corporations, or as necessary or appropriate in connection with the issuance of bonds, and may enter into agreements with any public or private entity and pledge the compact assets that it purchased as collateral and security for its bonds. However, to the extent of any conflict between any of the foregoing and the provisions of this article, the provisions of this article shall control. The pledge of any of these assets and of any revenues, reserves, and earnings pledged in connection with these assets shall be valid and binding in accordance with its terms from the time the pledge is made, and amounts so pledged and thereafter received shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, or other further act. The special purpose trust, and its assets and income, and bonds issued by the special purpose trust, and their transfer and the income therefrom, shall be exempt from all taxation by the state and by its political subdivisions.

(c) (1) The net proceeds of the sale of compact assets by the bank shall be deposited in the following order:

(A) One billion two hundred fourteen million dollars (\$1,214,000,000) to the Traffic Congestion Relief Fund for the purpose of funding or reimbursing the cost of projects, programs, and activities permitted and necessary to be funded by that fund in accordance with applicable law in the following priority order:

(i) Transfer of four hundred fifty-seven million dollars (\$457,000,000) to the State Highway Account for project expenditures.

(ii) Two hundred ninety million dollars (\$290,000,000) for allocation to Traffic Congestion Relief Program projects.

(iii) Three hundred eighty-four million dollars (\$384,000,000) to be allocated equally, as funds become available, for both of the following:

(I) To the Public Transportation Account for project expenditures.

(II) For advanced repayments of local street and road projects due for funding in the 2008–09 fiscal year.

(iv) Eighty-three million dollars (\$83,000,000) to the Public Transportation Account for project expenditures.

(v) Advanced funding of State Transit Assistance loans due for funding in the 2008–09 fiscal year.

(B) To the Transportation Deferred Investment Fund, an amount up to the outstanding amount of the suspension of the 2004–05 fiscal year transfer of the sales tax on gasoline to the Transportation Investment Fund pursuant to requirements of Article XIX B of the California Constitution.

(C) To the Transportation Deferred Investment Fund, an amount up to the outstanding amount of the suspension of the 2003–04 fiscal year transfer of the sales tax on gasoline to the Transportation Investment Fund pursuant to requirements of Article XIX B of the California Constitution.

(2) Notwithstanding paragraph (1), if and to the extent it is necessary to ensure to the maximum extent practicable the eligibility for exclusion from taxation under the federal Internal Revenue Code of interest on the bonds to be issued by the special purpose trust, the Director of Finance may adjust the application of proceeds not eligible for exclusion from taxation among the authorized funds described in paragraph (1). The Department of Finance shall submit a report to the Legislature describing any proposed changes among the authorized funds in paragraph (1), and consistent with this paragraph, at least 30 days prior to issuing the bonds pursuant to this article. Amounts deposited in the Traffic Congestion Relief Fund pursuant to paragraph (1) shall be applied as a credit to transfers from the General Fund that the Controller would otherwise be required to make to that fund. Amounts deposited in the Transportation Deferred Investment Fund shall be expended in conformance with Sections 7105 and 7106 of the Revenue and Taxation Code, and the amounts so deposited shall also be applied as a credit to the transfers from the General Fund that the Controller would otherwise be required to make under those sections. The Legislature hereby finds and declares that the deposits and credits described in this subdivision do not constitute the use of the proceeds of bonds or other indebtedness to pay a year-end state budget deficit as prohibited by subdivision (c) of Section 1.3 of Article XVI of the California Constitution. Subject to any constitutional limitation, the use and application of the proceeds of any sale of compact assets or bonds shall not in any way affect the legality or validity of that sale or those bonds.

(d) Funds received from amended tribal-state compacts, or new compacts entered into and ratified on or after the effective date of this article, pursuant to Section 4.3.1 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, that are neither sold to the special purpose trust nor otherwise appropriated, and funds received as a result of the state's acquisition of an ownership interest in any residual interest in compact assets attributable to Section 4.3.1 of the amended compacts, or the comparable



section in new compacts, as specified in those compacts, shall be remitted to the California Gambling Control Commission for deposit in the General Fund.

(e) Funds received from amended tribal-state compacts, or new compacts entered into and ratified on or after the effective date of this article, pursuant to Section 4.3.3 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, shall be held in an account within the Special Deposit Fund until those funds are sold or otherwise applied pursuant to this subdivision. From time to time, at the direction of the Director of Finance, any moneys in this account shall be deposited and applied in accordance with subdivision (c) or shall be deemed to be compact assets for purposes of sale to the special purpose trust pursuant to this article. If the Director of Finance determines that the bonds authorized pursuant to this article cannot be successfully issued by the special purpose trust, funds within the account shall be deposited in accordance with subdivision (c). In addition, all subsequent revenues remitted pursuant to Section 4.3.3 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, and funds received as a result of the state's acquisition of an ownership interest in any residual interest in compact assets attributable to Section 4.3.3 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, shall be used to satisfy the purposes of subdivision (c). When the amounts described in subdivision (c) have been paid to the funds named in that subdivision either pursuant to this article or by other appropriations or transfers, thereafter the revenues received by the state from Section 4.3.3 of the compact shall be remitted to the California Gambling Control Commission for deposit in the General Fund.

(f) The principal office of the special purpose trust shall be located in the County of Sacramento. The articles of incorporation of the special purpose trust shall be prepared and filed, on behalf of the state, with the Secretary of State by the bank. The members of the board of directors of the bank as of the effective date of this article, the Director of the Department of Transportation, and the Director of General Services, shall each serve ex officio as the directors of the special purpose trust. Any of these directors may name a designee to act on his or her behalf as a director of the special purpose trust. The Director of Finance or his or her designee shall serve as chair of the special purpose trust. Directors of the special purpose trust shall not be subject to personal liability for carrying out the powers and duties conferred by this article. The Legislature hereby finds and declares that the duties and responsibilities of the directors of the special purpose trust and the duties and responsibilities of the Director of Finance established under this article



are within the scope of the primary duties of those persons in their official capacities. The special purpose trust shall be treated as a separate legal entity with its separate corporate purpose as described in this article, and the assets, liabilities, and funds of the special purpose trust shall be neither consolidated nor commingled with those of the bank.

63048.7. Notwithstanding any other provision of this division, Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043) do not apply to any bonds issued by the special purpose trust established by this article. All matters authorized in this article are in addition to powers granted to the bank in this division.

63048.75. Any sale of some or all of the compact assets under this article shall be treated as a true sale and absolute transfer of the property so transferred to the special purpose trust and not as a pledge or grant of a security interest by the state, the bank board, or the bank for any borrowing. The characterization of the sale of any of those assets as an absolute transfer by the participants shall not be negated or adversely affected by the fact that only a portion of the compact assets is transferred, nor by the state's acquisition of an ownership interest in any residual interest in the compact assets, nor by any characterization of the special purpose trust or its bonds for purposes of accounting, taxation, or securities regulation, nor by any other factor whatsoever.

63048.8. (a) (1) On and after the effective date of each sale of compact assets, the state shall have no right, title, or interest in or to the compact assets sold, and the compact assets so sold shall be property of the special purpose trust and not of the state, the bank board, or the bank, and shall be owned, received, held, and disbursed by the special purpose trust or the trustee for the financing. None of the compact assets sold by the state pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the bank board, or the bank.

(2) On or before the effective date of any sale, the state, acting through the Director of Finance, upon direction of the bank, shall notify each tribe that has executed a designated tribal compact that the particular compact assets that have been sold to the special purpose trust and irrevocably instruct the tribe that, as of the applicable effective date and so long as the bonds secured by the compact assets are outstanding, the compact assets sold are to be paid directly to the trustee for the applicable bonds of the special purpose trust. Certification by the Director of Finance that this notice has been given shall be conclusive evidence thereof for purposes of this article.



(3) The state pledges and agrees with the holders of any bonds issued by the special purpose trust that it will not authorize anyone other than an Indian tribe with a federally authorized compact to engage in specified gaming activities within the defined core geographic market of an Indian tribe that is a party to a designated tribal compact in violation of the designated tribal compact as ratified by the Legislature, unless adequate provision is made by law for the protection of the holders of bonds in a manner consistent with the indenture or trust agreement pursuant to which the bonds are issued. The state pledges to and agrees with the holders of any bonds issued by the special purpose trust that it will (A) enforce its rights to collect the compact assets sold to the special purpose trust pursuant to this article, (B) not amend any designated tribal compact or take any other action, that would in any way diminish, limit, or impair the rights to receive compact assets sold to the special purpose trust pursuant to this article, and (C) not in any way impair the rights and remedies of bondholders or the security for their bonds until, in each case, those bonds, together with the interest thereon and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged or otherwise provided for pursuant to the terms of the indenture or trust agreement pursuant to which those bonds are issued. The special purpose trust may include these pledges and undertakings in its bonds. Notwithstanding any other provision of this article, inherent police powers that cannot be contracted away are reserved to the state.

(b) Bonds issued pursuant to this article shall not be deemed to constitute a debt of the state nor a pledge of the faith or credit of the state, and all bonds shall contain on the face of the bond a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the state or of any political subdivision of the state other than the special purpose trust, is or shall be pledged to the payment of the principal of or the interest on the bonds.

(c) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

(d) The special purpose trust and the bank shall be treated as public agencies for purposes of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and any action or proceeding challenging the validity of any matter authorized by this article shall be brought in accordance with, and within the time specified in, that chapter.

(e) Notwithstanding any other provision of law, the exclusive means to obtain review of a superior court judgment entered in an action

brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any bonds to be issued, any other contracts to be entered into, or any other matters authorized by this article shall be by petition to the Supreme Court for writ of review. Any such petition shall be filed within 15 days following the notice of entry of the superior court judgment, and no extension of that period shall be allowed. If no petition is filed within the time allowed for this purpose, or the petition is denied, with or without opinion, the decision of the superior court shall be final and enforceable as provided in subdivision (a) of Section 870 of the Code of Civil Procedure. In any case in which a petition has been filed within the time allowed, the Supreme Court shall make any orders as it may deem proper in the circumstances. If no answering party appeared in the superior court action, the only issues that may be raised in the petition are those related to the jurisdiction of the superior court. Nothing in this subdivision or subdivision (d) shall be construed as granting standing to challenge the designated tribal compacts.

63048.85. (a) The Legislature finds and declares that, because the proceeds from the sale of compact assets authorized by this article are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

(b) Compact assets shall not be deemed to be “State General Fund proceeds of taxes appropriated pursuant to Article XIII B” within the meaning of Section 8 of Article XVI of the California Constitution, Section 41202 of the Education Code, or any other provision of law.

(c) Compact assets are not General Fund revenues for the purposes of Section 8 of Article XVI of the California Constitution or any other provision of law.

63048.9. This article and all powers granted hereby shall be liberally construed to effectuate its intent and their purposes.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that sufficient funds are available when needed to fund essential transportation programs and to ensure that the revenues available under the amended tribal-state compacts ratified pursuant to this act are made available to the state as expeditiously as possible, it is necessary that this act take effect immediately.

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## **TRIBAL FAIR SHARE ACT OF 2004**

**Section 1. This Act shall be known as the Tribal Fair Share Act of 2004.**

**Section 2. Findings and purpose.**

The People of the State of California hereby find and declare as follows:

- a. Casino-style gambling exclusively on Indian lands was authorized by the People of California by the enactment of Proposition 1A in March 2000 with the understanding that tribal gaming operations would be limited in scope, confined to existing Indian lands, and would be beneficial to tribal members who were living in poverty.
- b. Since the passage of Proposition 1A giving California tribes a monopoly on casino gaming in the state, tribal gaming operations in California have grown to the point that there are now more than 60 tribal casinos and 60,000 slot machines on tribal lands, with more casinos under construction.
- c. Tribal gaming in California now annually generates more than \$5 billion in gross revenues and more money is gambled in California than in any other state except Nevada.
- d. Over 42,000 Californians are employed at tribal casinos. Because they are employed by tribes, they are not entitled to the same protection of state law as other California workers. Moreover, due to their low wages and lack of health benefits, many are forced to rely on taxpayer-supported health programs.
- e. In other states, many tribal and commercial casinos granted a monopoly on casino gambling pay 25% to 70% of their gross gaming income for the privilege of operating casinos.
- f. There are only approximately 35,000 tribal members in the entire State of California who are eligible to benefit from gambling revenues and fewer than half of these tribal members belong to tribes operating major casinos.
- g. Tribal casino operations have caused extensive off-reservation impacts – such as severe traffic congestion on inadequate roads, noise, air, and water pollution, and increased law enforcement and public safety demands – all of which annually cost local governments hundreds of millions of dollars.
- h. Tribal casinos are not required to pay any significant federal, state or local taxes (such as income, property, or sales tax).

- i. Tribal casinos benefit from programs and infrastructure expenditures by the State and local governments and individual tribal members are entitled to the same public benefits and services as all other Californians.
- j. The State of California and its local governments are currently in a severe fiscal crisis and can no longer afford to subsidize tribal gaming operations.
- k. This measure authorizes the Governor to enter into new or amended tribal gaming compacts under which the Indian tribes may agree to contribute to the State a fair share of the gross revenues derived from their gaming activities in exchange for the continued exclusive right to operate casino-style gaming facilities in the State.
- l. The amount of a tribal fair share should be negotiated between the State of California and the tribes as provided by the federal Indian Gaming Regulatory Act, rather than imposed by one party.

**Section 3. Section 19 of Article IV of the California Constitution is amended to read:**

(h)(1) Notwithstanding subdivision (f)(Ballot Proposition 1A, enacted March 7, 2000), in recognition of the continuing exclusive franchise granted the tribes for casino gambling activities, the tax-exempt status of tribal casinos, and the substantial costs imposed on the State and local governments as a result thereof, the Governor is authorized to seek amendments to any existing compact, and to seek in any compact negotiated after January 1, 2004, the following enforceable terms:

- (a) a requirement that a tribe pay a fair share to the State of California in an amount which takes into account the tribes' exclusive franchise on casino-style gaming and exemption from federal taxation, and is not less than what a California business conducting lawful gaming would pay in state taxes ("tribal fair share"); and
- (b) a requirement that a tribe negotiate directly with any city or county where the tribal casino is located for an enforceable agreement to make payments in lieu of local taxes that are imposed on non-tribal California businesses, and to mitigate any off-reservation impacts caused by the casino, including impacts on other cities and counties significantly affected, and that such mitigation incorporate the policies and purposes of the California Environmental Quality Act; and
- (c) A requirement that a tribe enact enforceable tribal ordinances that both recognize employment rights of its employees that are equivalent to those afforded California workers in non-tribal businesses, including the employees' right to choose an employee organization, and to receive health and welfare benefits.

(2) With respect to the amendment of any existing compact, or the negotiation of any new compact negotiated after January 1, 2004, if a tribe agrees to the provisions of subdivisions (a) through (c) of this subdivision (h), the Governor is authorized to agree to, but not exceed, the following terms:

- (a) For existing compacts, an increase in the number of slot machines that each tribe was authorized to operate on January 1, 2004, but in no case shall a tribe operate more than 3,000 slot machines or more than two casinos.
- (b) For new compacts, a maximum of 3,000 slot machines and not more than two casinos.

(3) If the tribe seeking a new compact after January 1, 2004 does not agree to the terms in subdivision (1) (a) through (c), the Governor is not authorized to negotiate a compact with that tribe for the operation of more than 350 slot machines.

(4) If a tribe with a compact in effect as of January 1, 2004 does not agree to the terms in subdivision (1) (a) through (c), the Governor is not authorized to negotiate any further amendments to that tribe's compact concerning the type of gaming activity permitted, the number of permitted slot machines or banking and/or percentage card games, or any other increase or change to the type or amount of permitted gaming.

#### **Section 4. Inconsistency with other Ballot Measures.**

The provisions of this Act shall be deemed to conflict with and to be inconsistent with any other initiative measure that appears on the same ballot that amends the California Constitution relating to gaming by federally recognized Indian tribes in California. In the event that this Act and another measure that amends the California Constitution relating to gaming by Indian tribes are adopted at the same election, the measure receiving the greater number of affirmative votes shall be given any force or effect.

#### **Section 5. Severability**

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the Act that can be given effect without the invalid or unconstitutional provision or application and to this end the provisions of this Act are severable.

## **THE INDIAN GAMING FAIR-SHARE REVENUE ACT OF 2004**

### **SECTION 1. Title**

This Act shall be known as the "Indian Gaming Fair-Share Revenue Act of 2004."

### **SECTION 2. Findings and Purpose**

The People of the State of California hereby find and declare as follows:

(a) The purpose of the People of the State of California in enacting this measure is to provide a means for California Indian tribes to contribute their fair share of gaming revenues to the State of California. Both the People of California and California Indian tribal governments desire for tribes to assist in restoring financial integrity to the State by contributing an amount that is equivalent to what any private California corporation pays to the State on the net income it earns from its lawful business activities.

(b) In March 2000, the People of the State of California adopted Proposition 1A, which authorized the Governor to negotiate tribal-state gaming compacts with federally recognized Indian tribes for the operation of slot machines and certain casino games on tribal lands in California in accordance with federal law. Proposition 1A was enacted by the People in recognition of the fact that, historically, Indian tribes within the State have long suffered from high rates of unemployment and inadequate educational, housing, elderly care, and health care opportunities, while typically being located on lands that are not conducive to economic development in order to meet those needs.

(c) Since the adoption of Proposition 1A, over fifty Indian tribes have entered into tribal gaming compacts with the State of California. These compacts and the gaming facilities they authorize have assisted Indian tribes throughout the State to move towards economic self-sufficiency by providing a much-needed revenue source for various tribal purposes, including tribal government services and programs such as those that address reservation housing, elderly care, education, health care, roads, sewers, water systems, and other tribal needs. Tribal gaming has also spurred new development, has created thousands of jobs for Indians and non-Indians alike, and has had a substantial positive economic impact on the local communities in which these facilities are located.

(d) Under the existing tribal gaming compacts, Indian tribes also pay millions of dollars each year into two State special funds that are used to provide grants to local governments, to finance programs addressing gambling addiction, to reimburse the State for the costs of regulating tribal gaming, and to share gaming revenues with other Indian tribes in the State that do not operate gaming facilities. However, because Indian tribes are sovereign governments and are exempt from most forms of taxation, they do not pay any corporate income taxes directly to the State on the profits derived from their gaming operations.

(e) Given California's current fiscal crisis, the State needs to find new ways to

generate revenues for the General Fund in the State Treasury. Indian tribes want to and should do their part to assist California in meeting its budget needs by contributing to the State a fair share of the net income they receive from gaming activities in recognition of their continuing right to operate tribal gaming facilities in an economic environment free of competition from casino-style gaming on non-Indian lands. A fair share for the Indian tribes to contribute to the State is an amount that is equivalent to the amount of corporate taxes that a private California corporation pays to the State on the net income it earns from its lawful business activities.

(f) Accordingly, in order to provide additional revenues to the State of California in this time of fiscal crisis, this measure authorizes and requires the Governor to enter into new or amended tribal gaming compacts under which the Indian tribes agree to contribute to the State a fair share of the net income derived from their gaming activities in exchange for the continued exclusive right to operate casino-style gaming facilities in California. In addition, in order to maximize revenues for the State and to permit the free market to determine the number and type of casino games and devices that will exist on tribal lands, this measure requires these new or amended compacts to allow each tribal government to choose the number and size of the gaming facilities it operates, and the types of games offered, that it believes will maximize the tribe's income, as long as the facilities are restricted to and are located in those areas that have been designated by both the State of California and the United States government as tribal lands. Under the new or amended compacts authorized by this measure, Indian tribes must also prepare environmental impact reports analyzing the off-reservation impacts of any proposed new or expanded gaming facilities, and they must consult with the public and local government officials to develop a good-faith plan to mitigate any significant adverse environmental impacts.

**SECTION 3.           Section 19 of Article IV of the California Constitution is amended to read:**

Sec. 19

(a)     The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b)     The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c)     Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d)     Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e)     The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.

(f)     Notwithstanding subdivisions (a) and (e), and any other provision of state

law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of ~~lottery games and banking and percentage card games~~ any and all forms of Class III gaming by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, roulette, craps, and banking and percentage card games, and any and all other forms of casino gaming are hereby specifically permitted to be conducted and operated on tribal lands subject to those compacts.

(fg) Notwithstanding subdivision (a), the Legislature may authorize private, nonprofit, eligible organizations, as defined by the Legislature, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle. The Legislature, two-thirds of the membership of each house concurring, may amend the percentage of gross receipts required by this subdivision to be dedicated to beneficial or charitable purposes by means of a statute that is signed by the Governor.

(h) Notwithstanding subdivisions (e) and (f), and any other provision of state law, within thirty days of being requested to do so by any federally recognized Indian tribe, the Governor is authorized, directed, and required to amend any existing compact with any Indian tribe, and to offer a new compact to any federally recognized Indian tribe without an existing compact, in accordance with the provisions of this subdivision (h). An "existing compact" means a gaming compact entered into between the State and an Indian tribe that was ratified prior to the effective date of the Indian Gaming Fair-Share Revenue Act of 2004. Any existing compact that is amended pursuant to this subdivision (h) shall not require legislative ratification, but any new compact entered into pursuant to this subdivision (h) shall be submitted to the Legislature within fifteen days after the conclusion of negotiations and shall be deemed ratified if it is not rejected by each house of the Legislature, two-thirds of the members thereof concurring in the rejection, within thirty days of the submission of the compact to the Legislature by the Governor, except that if this thirty-day period ends during a joint recess of the Legislature, the period shall be extended until the tenth day following the day on which the Legislature reconvenes. All compacts amended pursuant to this subdivision (h), and all new compacts entered into pursuant to this subdivision (h), shall include the following terms, conditions, and requirements:

(1) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision (h) shall agree under the terms of the compact to contribute to the State, on a sovereign-to-sovereign basis, a percentage of its net income from gaming activities that is equivalent to the amount of revenue the State would receive on the

same amount of net business income earned by a private, non-exempt California corporation based upon the then-prevailing general corporate tax rate under the state Revenue and Taxation Code. This contribution shall be made in consideration for the exclusive right enjoyed by Indian tribes to operate gaming facilities in an economic environment free of competition for slot machines and other forms of Class III casino gaming on non-Indian lands in California. The compact shall provide that in the event the Indian tribes lose their exclusive right to operate slot machines and other forms of Class III casino gaming in California, the obligation of the Indian tribe to contribute to the State a portion of its net income from gaming activities pursuant to this subdivision (h) shall cease. Contributions made to the State pursuant to this subdivision (h) shall be in lieu of any and all other fees, taxes or levies that may be charged or imposed, directly or indirectly, by the State, cities, or counties against the Indian tribe on its authorized gaming activities, except that a tribe amending an existing compact or entering into a new compact pursuant to this subdivision (h) shall be required to make contributions to the Revenue Sharing Trust Fund and, if the tribe operated gaming devices on September 1, 1999, to the Special Distribution Fund, in amounts and under terms that are identical to those contained in the existing compacts.

(2) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision (h) shall agree under the terms of the compact to adopt an ordinance providing for the preparation, circulation, and consideration by the tribe of an environmental impact report analyzing potential off-reservation impacts of any project involving the development and construction of a new gaming facility or the significant expansion, renovation, or modification of an existing gaming facility. The environmental impact report prepared in accordance with this subdivision shall incorporate the policies and objectives of the National Environmental Policy Act and the California Environmental Quality Act consistent with the tribe's governmental interests. Prior to the commencement of any such project, the tribe shall also agree (i) to inform and to provide an opportunity for the public to submit comments regarding the planned project, (ii) to consult with local governmental officials regarding mitigation of significant adverse off-reservation environmental impacts and to make good-faith efforts to mitigate any and all such significant adverse off-reservation environmental impacts, and (iii) to keep local governmental officials and potentially affected members of the public informed of the project's progress.

(3) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision (h) shall be entitled under the terms of the compact to operate and conduct any forms and kinds of gaming authorized and permitted pursuant to subdivision (f)

of this section.

(4) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision (h) shall be entitled under the terms of the compact to operate as many slot machines and to conduct as many games as each tribal government deems appropriate. There shall likewise be no limit under the terms of the compact on the number or the size of gaming facilities that each tribe may establish and operate, provided that each and every such gaming facility must be owned by the tribe and operated only on Indian lands on which such gaming may lawfully be conducted under federal law.

(5) The initial term of any new or amended compact entered into pursuant to this subdivision (h) shall be ninety-nine years, and the compact shall be subject to renewal upon mutual consent of the parties. The terms and conditions of any new or amended compact entered into pursuant to this subdivision (h) may be amended at any time by the mutual and written agreement of both parties.

(6) Any Indian tribe with an existing compact that wishes to enter into an amended compact pursuant to this subdivision (h) shall not be required as a condition thereof to make any other amendments to its existing compact or to agree to any other terms, conditions, or restrictions beyond those contained in this subdivision (h) and in its existing compact, except as the provisions of its existing compact may be modified in accordance with subdivisions (1) - (5) above.

**SECTION 4. Section 12012.80 is added to the California Government Code to read:**

**12012.80 Indian Gaming Fair-Share Revenue Fund**

(a) There is hereby created in the State Treasury a fund called the "Indian Gaming Fair-Share Revenue Fund" for the receipt and deposit of moneys received by the State from Indian tribes under the terms of tribal-state gaming compacts entered into or amended pursuant to article IV, section 19, subdivision (h), of the California Constitution.

(b) Moneys in the Indian Gaming Fair-Share Revenue Fund shall be available for appropriation by the Legislature for any purpose specified by law.

**SECTION 5.           Inconsistency With Other Ballot Measures**

The provisions of this Act shall be deemed to conflict with and to be inconsistent with any other initiative measure that appears on the same ballot that amends the California Constitution relating to gaming by federally recognized Indian tribes in California. In the event that this Act and another measure that amends the California Constitution relating to gaming by Indian tribes are adopted at the same election, the measure receiving the greater number of affirmative votes shall prevail in its entirety, and no provision of the measure receiving the fewer number of affirmative votes shall be given any force or effect.

**SECTION 6.           Severability**

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Act are severable.